IN THE

SUPREME COURT OF THE UNITED STATES

Office-Supreme Court, U.S.
FILED
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October Term, 1968

No. 396

AIR INDIA, a foreign carrier,

Petitioner,

vs.

LARRY J. HOFFMAN, as Executor of the Estate of E. W. CALLAWAY, deceased, and BANK OF COMMERCE OF FLORIDA, Guardian of the property of SARAH CALLAWAY, a minor,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOEL H. FISHER
Suite 1000, 1522 K Street, N.W.
Washington, D. C. 20005
and
JACKSON L. PETERS
628 Ingraham Building
Miami, Florida 33131
Attorneys for Petitioner

FISHER, SHARLITT & GELBAND
and
KNIGHT, UNDERWOOD, PETERS,
HOEVELER & PICKLE
of counsel

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R.: Printed Record on Appeal in Case #67-76, Hoffman v. Air India and The Boeing Co., Inc., pages 1-115.

RI.: Printed Record on Appeal, contained in same volume, in Case #67-75, Bank of Commerce of Florida v. Air India and The Boeing Co., Inc., pages 1-79.

Petitioner, AIR INDIA, respectfully prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above styled cause on March 26, 1968, to which a timely filed Petition for Rehearing was denied on June 18, 1968.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals, Fifth Circuit, 393 F.2d 507 is printed in Appendix B. The unreported opinion of the District Court in the current case appears at Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals, Fifth Circuit, is dated and was entered on March 26, 1968 (R. 81-85). A Petition for Rehearing timely filed was denied on June 18, 1968 (R. 86-93, 97). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I.

Whether AIR INDIA, a foreign corporation not qualified to do business in Florida, which only maintains an "off-line" sales office in Miami, Florida engaged solely in sales promotion for AIR INDIA flights originating in New York City which flights do not land in the State of Florida, is doing business in Florida or has sufficient "minimum contacts" within Florida in order to subject AIR INDIA to service of process in Florida.

II.

Whether Petitioner, AIR INDIA, a foreign corporation not qualified to do business in Florida, is subject to personal jurisdiction in Florida when none of the activities of AIR INDIA in the State of Florida gave rise to Respondents' cause of action.

STATUTES INVOLVED

The statutory provisions involved are:

Section 47.16 Florida Statutes

Section 47.17 Florida Statutes

Section 47.17 Florida Statutes, amended effective July 26, 1967

Section 47.171 Florida Statutes

These statutory provisions are printed in Appendix A.

STATEMENT OF THE CASE

Respondents, LARRY J. HOFFMAN, as Executor of the Estate of E. W. CALLAWAY, deceased, and BANK OF COMMERCE OF FLORIDA, Guardian of the property of SARAH CALLAWAY, a minor, sued Petitioner, AIR INDIA, a foreign carrier not qualified to do business in Florida, and The Boeing Company for the wrongful death of Mr. Callaway as a result of a crash of an AIR INDIA airliner in France on January 24, 1966. (R. 1-14; RI. 1-16) Service of process on AIR INDIA was made on Joseph M. Boggs, district sales manager, in Miami, Florida. (R. 25-27; RI. 21-23)

The jurisdiction of the Federal District Court was invoked by Respondents on the ground of diversity of citizenship, i.e., actions by Florida citizens against foreign corporations.

AIR INDIA filed a motion to dismiss on jurisdictional grounds and alternative motion to dismiss on the merits, (R. 36-43; RI. 35-43) which alleged: (1) service of process is ineffective; (2) service of process is insufficient to obtain jurisdiction over the person of this Defendant; (3) Defendant is not "doing business" within the State of Florida within the meaning of F.S.A. 47.16 and 47.17; (4) purported service of process under 47.17 and 47.171 is insufficient as a matter of law; (5) the obligation or cause of action stated in the complaint did not arise out of any of the activities of AIR INDIA within the State of Florida; (6) Defendant, AIR INDIA, invoked the provision of the 14th Amendment of the Constitution of the United States and avers that the purported service of process violates the due process requirements; and (7) a decision by the trial court that jurisdiction was obtained over Defendant, AIR INDIA, would constitute a violation of Defendant's constitutional rights under the due process clause.

The affidavit of Joseph M. Boggs, district sales manager of AIR INDIA, stated:

1. AIR INDIA, a scheduled foreign air carrier, is a foreign corporation not authorized to do business in Florida.

2. AIR INDIA does not have a designated resident agent for service of process within the State of Florida.

3. Plaintiff sought to obtain service of process upon AIR INDIA by first serving Blanche Rheinhardt, a reservation agent, and thereafter served Mr. Boggs, district manager.

4. At all times material to this cause AIR INDIA did not have any flights which originated or terminated in the State of Florida and did not have any flights which touched the State of Florida even as an intermediate stopover.

5. AIR INDIA's only connection with the State of Florida is the maintenance of an "off-line" sales office in Miami, Florida. This is the only office or sales outlet within the State. The Miami office is engaged solely in sales promotion for AIR INDIA flights originating in New York, New York. The sole function of the office is to sell tickets, make reservations and arrange for connecting accommodations with AIR INDIA flights departing from New York, New York.

6. AIR INDIA does not have any aircraft or a base of operations within the State of Florida. Nor does it have flight, maintenance, operational or training personnel or facilities within the State of Florida or any terminal facilities at Miami International Airport or elsewhere within the State.

7. Captain Callaway purchased a ticket from McPherson Travel Bureau in New York City, New York on January 5, 1966 from New York to Bombay, India with return flight to New York. On January 22, Captain Callaway was reissued a new ticket by AIR INDIA in

Bombay which routed him from Bombay to New York City via a stopover in Paris, France.

8. The aircraft involved in the accident of January 24, 1966 near Mont Blanc was not maintained, supplied or served by any company facility maintained within the State of Florida.

9. None of the acts or omissions alleged in the complaint were connected with or were in any way related to the company's sales operation maintained in Miami, Florida. Captain Callaway did not purchase a ticket from the Miami office of AIR INDIA for any connecting flight prior to his departure from New York City. (R. 39-43; RI. 39-43)

On deposition Mr. Boggs stated that he was employed by AIR INDIA as a district sales manager and was a permanent resident of Miami, Florida. The AIR INDIA sales office had four employees including Mr. Boggs and was located in Miami, Florida. Mr. Boggs' sole duties were to promote the sales of seats on AIR INDIA out of the New York Gateway. Tickets were issued in the office, reservations taken and literature of a promotional nature distributed in Florida for the sale of seats on AIR INDIA. (R. 57-65)

The District Court held that Captain Callaway purchased a ticket in New York for air transportation to and from Bombay via AIR INDIA; AIR INDIA operates no aircraft to or from Florida; AIR INDIA only maintains an off-line sales office in Florida with four employees of which the district sales manager is one; the activities of the sales office are restricted to the sale of

airplane tickets for AIR INDIA whose flights originate and terminate outside the state of Florida; and the sales office in Miami had no connection with arranging the transportation or the sale of the ticket for Captain Callaway.

Therefore the District Court determined that Florida's long arm statute was not long enough to permit service on AIR INDIA in accordance with **Zirin v. Charles Pfizer & Co.**, Fla. 1961, 128 So.2d 594; and **Illinois Central Railroad Company v. Simari**, Fla. 1966, 191 So.2d 427, and granted AIR INDIA's motion to dismiss for lack of jurisdiction.

The United States Court of Appeals, Fifth Circuit, in reversing the order of the District Court dismissing Respondents' suits against Petitioner, AIR INDIA, held that even though Respondents' cause of action did not arise out of Petitioner's Florida activities, Florida's long arm statute F.S.A. §§ 47.16, 47.17 and 47.171 was long enough to subject AIR INDIA to suit in Florida.

REASONS FOR GRANTING THE WRIT

The first ground for this Petition for a Writ of Certiorari is as follows: The decision of the United States Court of Appeals, Fifth Circuit, held that the maintenance of an "off-line" sales office in Miami, Florida which only engages in sales promotion for AIR INDIA flights originating in New York which flights do not land in the State of Florida constitutes sufficient "minimum contacts" in Florida in order to subject AIR INDIA to service of process in Florida even though the law suit was not connected with any of AIR INDIA's Florida activities.

The decision of the United States Court of Appeals directly conflicts with the following decisions of **Kelley v. Delaware, L. & W. R. Co.**, (1st Cir. 1948), 170 F.2d 195; and **MacInnes v. Fontainebleau Hotel Corp.**, (2nd Cir. 1958), 257 F.2d 832. The decision also conflicts with the decisions of this Honorable Court in **Green v. Chicago, Burlington, & Quincy Railway Company**, 205 U.S. 530, 27 S.Ct. 595, 51 L.Ed. 916; **International Shoe Co. v. Washington**, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95; and **Hanson v. Denckla**, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed. 2d 1283.

In **Kelley v. Delaware, L. & W. R. Co.**, supra, plaintiff sued in the Federal District Court of Massachusetts for the recovery of damages arising out of personal injuries occurring in New York. Defendant was a foreign railroad corporation which did not have any tracks in Massachusetts. Defendant operated an office in Boston from which several men worked through the New England territory soliciting business for the company's railroad line which operated between Binghamton, New York and Hoboken, New Jersey. The men who worked out of the Massachusetts office were concerned only with freight activitiy and were solely engaged in the activity of selling the railroad's services.

The District Court granted defendant's motion to dismiss for lack of jurisdiction (76 F.Supp. 600) and the Court of Appeals, First Circuit, in affirming said:

> "It is worth noting, however, that this case is on all fours with Green v. Chicago, Burlington, & Quincy Ry. Co., 1907, 205 U.S. 530, 27 S.Ct. 595, 51 L.Ed. 916 which held the attempted exercise of jurisdiction in this situation is unconsti-

tutional. It has never been overruled. It may stand as a marker locating the line where state contact becomes too tenuous to found jurisdiction within current concepts of due process or it may not. But while it stands, its authority provides a reason in addition to the application of the state construction of the state statute, to support the conclusion reached by the District Court."

In **MacInnes v. Fontainebleau Hotel Corp.**, supra, plaintiff sued defendant in the Federal District Court in New York for a tort occurring at defendant's hotel on Miami Beach, Florida. The Court of Appeals for the Second Circuit in affirming the order of dismissal held that all of defendant's hotel facilities were located in Miami Beach, Florida and therefore it was not doing business in the State of New York even though it maintained a small office in New York City with three employees whose duties were to receive requests for reservations which were forwarded to Florida for confirmation and to answer inquiries and distribute brochures. The Court held that the fact that it maintained an inactive bank account in New York or that advertisements referred to its New York office were immaterial.

The decision also conflicts with **Green v. Chicago, Burlington, & Quincy Railway Company**, supra, where plaintiff, a citizen of Pennsylvania, brought an action in the District Court of Pennsylvania to recover damages for personal injuries received in Colorado through negligence of defendant railroad, an Iowa corporation. Service of process was attempted to be made on Heller, district freight and passenger agent. The Court held that service

was insufficient because defendant was not doing business within the district.

This Honorable Court affirmed and pointed out that the eastern point of defendant's railroad was at Chicago and the business for which it was incorporated was the carriage of freight and passengers and construction, maintenance and operation of a railroad for that purpose. When a prospective passenger desired a ticket and applied to the agent for one, the agent took the money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a pre-paid order which gave the applicant upon his arrival in Chicago the right to receive from defendant a ticket over their lines.

This Honorable Court held that the only business defendant conducted in the district was solicitation and that this was not "doing business in the sense that liability to service is incurred".

The opinion also directly conflicts with the restrictions set forth by this Honorable Court in **International Shoe Company v. Washington,** supra, and the cogent reminder of this Honorable Court stated in **Hanson v. Denckla,** supra.

The second ground for this Petition for a Writ of Certiorari is as follows: the United States Court of Appeals, Fifth Circuit, held that even though none of the activities of AIR INDIA in the State of Florida gave rise to Respondents' cause of action, Petitioner was nonetheless subject to service of process in Florida pursuant to Florida's long arm statute, F.S.A. 47.16, 47.17 and 47.171.

The decision of the Court of Appeals also directly conflicts with the following Florida decisions: **Illinois Central Railroad Company v. Simari**, supra; **Zirin v. Charles Pfizer & Co.**, supra; **Manus v. Manus**, Fla.App. 1966; 193 So.2d 236; **O'Connell v. Loach**, Fla.App. 1967, 194 So.2d 700; **Unterman v. Brown**, Fla.App. 1964, 169 So.2d 522; and **James v. Kush**, Fla.App. 1963, 157 So.2d 203.

The substance of the holdings of these Florida decisions which the Court of Appeals for the Fifth Circuit has ignored by rendering a decision which directly conflicts therewith may be summarized as follows: in order to obtain service of process over a foreign corporation not qualified to do business in Florida the activity which is the basis of the cause of action must have occurred in Florida. This underlying principle has as is genesis the following language of this Honorable Court in **International Shoe Co. v. Washington**, supra, which was quoted by the Florida Supreme Court in **Illinois Central Railroad Company v. Simari**, supra:

> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, **so far as those obligations arise out of or are connected with the activities within the state**, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. [Emphasis added.]' "

The mandatory requirement in Florida as set forth in the above cited decisions is further evidenced by the recent amendment to F.S.A. 47.17, effective July 26, 1967 [Appendix A] which does not aid Respondents. It is submitted that if the controlling Florida law at the time Respondents' cause of action arose and at the time the law suit was filed allowed a foreign corporation to be sued in Florida even though the cause of action did not arise out of any of the corporate activities in Florida, there would have been no necessity for the amendment.

CONCLUSION

The opinion of the United States Court of Appeals for the Fifth Circuit directly conflicts with the decisions of the Courts of Appeals for the First and Second Circuits and the decisions of this Honorable Court on the same matter. The decision also directly conflicts with applicable and binding Florida decisions on the same point. The mere maintenance of an "off-line" sales office by AIR INDIA in Miami, Florida for the promotion of air transportation out of New York City which does not even stop over in Florida does not constitute "minimum contacts" within the State of Florida in order to subject AIR INDIA to service of process in Florida.

Florida's long arm statute, F.S.A. 47.16, 47.17, and 47.171 requires that in order for a foreign corporation not authorized to do business in Florida to be subject to a law suit in Florida the corporate activities in Florida must give rise to the cause of action.

The opinion of the United States Court of Appeals for the Fifth Circuit conflicts with these decisions. For

the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOEL H. FISHER
Suite 1000, 1522 K Street, N.W.
Washington, D. C. 20005

and

JACKSON L. PETERS
628 Ingraham Building
Miami, Florida 33131
Attorneys for Petitioner

By _____
JACKSON L. PETERS

August 9, 1968

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that a true copy of the foregoing Petition for a Writ of Certiorari was mailed to Robert Orseck, Esq., PODHURST & ORSECK, and NICHOLS, GAITHER, BECKHAM, COLSON, SPENCE & HICKS, Attorneys for Respondents, 2nd Floor, Concord Building, 66 W. Flagler Street, Miami, Florida 33130; and DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, Attorneys for The Boeing Company, Dade Federal Building, Miami, Florida, this_____ day of August, 1968.

JOEL H. FISHER
Suite 1000, 1522 K Street, N.W.
Washington, D. C. 20005

and

JACKSON L. PETERS
628 Ingraham Building
Miami, Florida 33131
Attorneys for Petitioner

By _____
JACKSON L. PETERS

APPENDIX "A"

Section 47.16, Florida Statutes:

"47.16 Service of process upon nonresident engaging in business in state.—

(1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, shall be deemed equivalent to an appointment by such persons and foreign corporations of the secretary of state of the state as the agent of such persons or foreign corporations upon whom may be served all lawful process in any action, suit or proceeding against them, or either of them, arising out of any transaction or operation connected with or incidental to such business or business venture, and the acceptance of such privilege shall be signification of the agreement of such persons and foreign corporations that any such process against them or either of them, which is so served shall be of the same legal force and validity as if served personally on such persons or foreign corporations. Service of such process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provision of §47.30. Provided that if a foreign corporation has a resident agent in the state, service of process shall be had upon such resident agent as now provided by statute.

(2) Any person, firm or corporation, which through brokers, jobbers, wholesalers or distributors sells, consigns, or leases, by any means whatsoever, tangible or intangible personal property, to any person, firm or corporation in this state, shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business or business venture in this state."

Section 47.17, Florida Statutes:

"47.17 Service of process on private corporation.—Process against any corporation, domestic or foreign, may be served:

(1) Upon the president or vice-president, or other head of the corporation; and in the absence of such head:

(2) Upon the cashier, treasurer, secretary or general manager; and in the absence of all the above:

(3) Upon any director of such company; and in the absence of all of the above:

(4) Upon any officer or business agent, resident in the state.

(5) If a foreign corporation shall have none of the foregoing officers or agents in this state, service may be made upon any agent transacting business for it in this state.

(6) This section shall not apply to service of process upon insurance companies.

(7) The provisions of this section shall be cumulative to all existing laws."

Section 47.17, Florida Statutes, amended effective July 26, 1967:

"CHAPTER 67-399

Senate Bill No. 877

AN ACT relating to commencement of suits at law and process; amending section 47.17, Florida Statutes, by adding subsection (8), providing for service of process upon private corporations.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 47.17, Florida Statutes, is amended by adding subsection (8) to read:

47.17 Service of process on private corporation.—Process against any corporation, domestic or foreign, may be served:

(8) Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

Approved by the Governor July 25, 1967.

Filed in Office Secretary of State July 26, 1967."

Section 47.171, Florida Statutes:

"47.171 Service of process; domestic and foreign corporations.—When any domestic or foreign corporation shall fail to comply with §§47.34 and 47.35 relating to the designation of the place for service of process, or in the alternative, with §47.36 relating to the designation of the office of the clerk of the circuit court as a place for service of process, then process directed to any domestic corporation failing to comply with said sections may be served upon any officer or agent of such domestic corporation resident in the state or transacting business for it in the state. Process directed to any foreign corporation failing to comply with said sections may be served upon any agent of such foreign corporation transacting business for it in Florida."

APPENDIX "B"

In The

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

No. 24932

LARRY J. HOFFMAN, as Executor Of the Estate of E. W. CALLAWAY, deceased, and BANK OF COMMERCE OF FLORIDA,

Appellants,

vs.

AIR INDIA,

Appellee.

Appeals from the United States District Court for the Southern District of Florida.

(March 26, 1968.)

Before BROWN, Chief Judge, JONES and CLAYTON, Circuit Judges.

PER CURIAM: The District Judge dismissed Appellants suits (filed January 1967) against Air India for lack of

jurisdiction over the person of that foreign corporation. The sole question presented is whether Florida's long arm statute, F.S.A. §§47.16, 47.17, 47.171, and especially §47.17(4),[1] is long enough to subject Air India to suit in Florida on a claim which did not arise in any way out of Florida activities.[2] We reverse.

Air India's only troublesome contention is that for service of process on its resident agent to be perfected under Florida's long arm statute the cause of action must arise out of the foreign corporation's business activities within the State of Florida notwithstanding the fact that it maintained an office in Miami in which it

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[1]Section 47.17 provides:

"Service of process on private corporation. — Process against any corporation, domestic or foreign, may be served.
* * *

"(4) Upon any officer or business agent, resident in the state."

A new subparagraph (8) has been added (approved by the Governor July 25, 1967):

"(8) Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state."

[2]The airplane crash which gave rise to this suit occurred in France. The round trip ticket had been purchased and issued by Air India's New York Office. Air India is a foreign corporation not licensed to do business in Florida.

regularly carried on substantial business for its own profit.[3]

Subsequent to the decision below and indeed during the pendency of this appeal this contention was decided adversely to Air India in the recent case of Woodham v. Northwestern Steel and Wire Co., 5 Cir., 1968, — F.2d — [No. 24617, Feb. 5, 1968]. In a fact situation not nearly so strong as this one this Court held that "where a business agent of a foreign corporation actually resides in Florida and engages in sustained, continuous business for his employer, the corporation may be sued by service on a resident agent under §47.17(4), F.S.A., regardless of where the cause of action arose***." — F.2d at —

The Florida arm, short or long, is long enough to reach the one-third mile from the United States Courthouse, 300 N. E. First Avenue, Miami, to nearby 100 Biscayne Boulevard, North.

REVERSED.

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[3]The uncontradicted facts from Air India's resident manager showed the following contracts with Florida. The Corporation maintains and pays the rent on a permanent office at 100 Biscayne Boulevard, North, in Miami for the purpose of selling tickets for seats on Air India flights (none of which originate or terminate in Florida). A regularly employed, full-time district sales manager and three other employees work in the Miami office each of whom is a permanent resident of Florida. Literature and promotional material is distributed by those employees. Tickets are sold and issued and reservations on flights are made directly by the Miami office. The office has a telephone and a listing in its name plus yellow page advertisements in the Miami telephone book. The district manager is a permanent resident of Miami and is answerable only to the sales manager in New York. It was the resident district manager in Miami who was personally served with process in this suit. These facts clearly are enough to satisfy due process clause requirements. See Woodham v. Northwestern Steel and Wire Co., 5 Cir., 1968, — F.2d — [No. 24617, Feb. 5, 1968]; *cf.* Phillips v. Hooker Chem. Corp., 5 Cir., 1967, 375 F.2d 189.

JONES, Circuit Judge, Concurring Specially:

I dissented in Woodham v. Northwestern Steel and Wire Co., cited in the Court's opinion, because of my belief that the persons upon whom process was served were not of the kind necessary to come within the purview of the Florida Statute. I concur in the decision in this case because I believe that the doctrine of stare decisis requires it. I concur for the further reason that the agents upon whom service of process was made in this case were of a kind which the Florida Statute did and properly could permit service to be made upon.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION NO. 67-76

LARRY J. HOFFMAN, as Executor of the Estate of E. W. CALLAWAY, deceased,

Plaintiff,

vs.

AIR INDIA, a foreign carrier, and THE BOEING COMANY,

Defendants.

ORDER

THIS CAUSE was heard upon defendant AIR INDIA'S Motion to dismiss for inadequacy of service of process. There is no dispute as to the following facts. Captain Callaway purchased a ticket in New York for air transportation to and from Bombay, India, via AIR INDIA. In Bombay, at the request of Captain Callaway, AIR INDIA changed his return ticket so that he had a stop-over privilege in Paris. Captain Callaway died as a result of the airplane's crashing into Mont Blanc near Chamonix, France.

This action was instituted by LARRY J. HOFFMAN in this Court and service of process was served upon the district sales manager for AIR INDIA in Miami. AIR INDIA operates no aircraft to or from Florida. It has no operational activities in Florida except the maintenance of an off-line sales office, with four employees of which the district sales manager is one. The activities of the sales office are restricted to the sale of airplane tickets

for AIR INDIA whose flights originate and terminate outside the state of Florida, and connecting flights. The sales office in Miami had no connection whatever with arranging the transportation or the sale of the ticket for Captain Callaway.

Florida's long arm statute is not long enough to permit the service that has been attempted here. See **Zirin v. Charles Pfizer & Co.**, 128 So.2d 594 (Fla. 1961); **Illinois Central Railroad Co. v. Simari.**, 191 So.2d 427 (Fla. 1966). Thereupon, it is.

ORDERED AND ADJUDGED that defendant AIR INDIA'S Motion to Dismiss for lack of jurisdiction be and the same is hereby granted.

DONE AND ORDERED at Miami, Florida, this 13 day of March, 1967.

/S/ CHARLES B. FULTON
United States District Judge

(R 67, 68)

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION NO. 67-76

LARRY J. HOFFMAN, as Executor of the Estate of E. W. CALLAWAY, deceased,

Plaintiff,

vs.

AIR INDIA, a foreign Carrier, and THE BOEING COMPANY,

Defendants.

THIS CAUSE came on to be heard on the plaintiff's motion for entry of final judgment pursuant to the provisions of Rule 54 of the Federal Rules of Civil Procedure, and the Court having entered an order herein under date of April 19, 1967, granting the plaintiff's motion for entry of final judgment, and the Court having determined that there was no just reason for delay, and having directed the entry of a final judgment, it is therefore, upon consideration,

ORDERED AND ADJUDGED that final judgment is hereby entered in favor of the defendant AIR INDIA, a foreign air carrier, and against the plaintiff LARRY J. HOFFMAN, as Executor of the Estate of E. W. Callaway, Deceased, and said defendant shall go hence without day and recover of and from the plaintiff its costs, to be taxed by the Clerk of this Court.

DONE AND ORDERED, in Chambers, at Miami, Dade County, Florida, this 26th day of April, 1967.

/S/ CHARLES B. FULTON
United States District Judge

(R 77, 78)

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION NO. 67-75

BANK OF COMMERCE OF FLORIDA, Guardian of the property of SARAH CALLAWAY, a minor,

Plaintiff,

vs.

AIR INDIA, a foreign carrier, and THE BOEING COMPANY,

Defendants.

ORDER

THIS CAUSE was heard upon defendant AIR INDIA'S Motion to Dismiss for inadequacy of service of process. There is no dispute as to the following facts. Captain Callaway purchased a ticket in New York for air transportation to and from Bombay, India, via AIR INDIA. In Bombay, at the request of Captain Callaway, Air India changed his return ticket so that he had a stop-over privilege in Paris. Captain Callaway died as the result of the airplane's crashing into Mont Blanc near Chamonix, France.

This action was instituted by the BANK OF COMMERCE OF FLORIDA in this Court and service of process was served upon the district sales manager for Air India in Miami. Air India operates no aircraft to or from Florida. It has no operational activities in Florida except the maintenance of an off-line sales office, with four employees of which the district sales manager is one. The activities of the sales office are restricted to the sale of airplane tickets for Air India whose flights originate and terminate outside the state of Florida, and connecting flights. The sales office in Miami had no connection whatever with arranging the transportation or the sale of the ticket for Captain Callaway.

Florida's long arm statute is not long enough to permit the service that has been attempted here. See **Zirin v. Charles Pfizer & Co.**, 128 So2d 594 (Fla. 1961); **Illinois Central Railroad Co. v. Simari**, 191 So2d. 427 (Fla. 1966).

Thereupon, it is

ORDERED and ADJUDGED that defendant AIR INDIA'S Motion to Dismiss for lack of jurisdiction be and the same is hereby granted.

DONE and ORDERED at Miami, Florida, this 13th day of March, 1967.

/S/ CHARLES B. FULTON
Chief Judge

(RI. 56, 57)

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION NO. 67-75

BANK OF COMMERCE OF FLORIDA, Guardian of the property of SARAH CALLAWAY, a minor,

Plaintiff,

vs.

AIR INDIA, a foreign carrier, and THE BOEING COMPANY,

Defendants.

THIS CAUSE came on to be heard on the plaintiff's motion for entry of final judgment pursuant to the provisions of Rule 54 of the Federal Rules of Civil Procedure, and the Court having entered an order herein under date of April 19, 1967, granting the plaintiff's motion for entry of final judgment, and the Court having determined that there was no just reason for delay, and having directed the entry of a final judgment, it is therefore, upon consideration,

ORDERED AND ADJUDGED that final judgment is hereby entered in favor of the defendant AIR INDIA, a foreign air carrier, and against the plaintiff BANK OF COMMERCE OF FLORIDA, Guardian of the Property of Sarah Callaway a minor, and said defendant shall go hence without day and recover of and from the plaintiff its costs, to be taxed by the Clerk of this Court.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 26 day of April, 1967.

/S/ CHARLES B. FULTON

(RI. 67)